PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE HONORABLE BOARD OF PATENT APPEALS AND INTERFERENCES

In re the Application of

Masaaki IMAI

Application No.: 09/277,373 Examiner: C. KENDALL

Filed: March 29, 1999 Docket No.: 103014

For: DEVICE FOR REWRITING SOFTWARE PROGRAMS IN PERIPHERAL DEVICES CONNECTED TO A NETWORK

BRIEF ON APPEAL

Appeal from Group 2122

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I. REAL PARTY IN INTEREST

The real party in interest for this appeal and the present application is Seiko Epson Corporation, by way of an Assignment recorded in the U.S. Patent and Trademark Office at Reel 9863, Frame 0038.

II. STATEMENT OF RELATED APPEALS AND INTERFERENCES

There are no prior or pending appeals, interferences or judicial proceedings, known to Appellant, Appellant's representative, or the Assignee, that may be related to, or which will directly affect or be directly affected by or have a bearing upon the Board's decision in the pending appeal.

There are no prior or pending appeals, interferences or judicial proceedings, known to Appellant, Appellant's representative or the Assignee.

III. STATUS OF CLAIMS

Claims 1, 3, 6, 8, 9, 12, 14, 17, 20, 21, 24 and 25 are on appeal.

Claims 1, 3, 6, 8, 9, 12, 14, 17, 20, 21, 24 and 25 are pending.

No claims are allowed.

Claims 1, 3, 6, 8, 9, 12, 14, 17, 20, 21, 24 and 25 are rejected.

Claims 2, 4, 5, 7, 10, 11, 13, 15, 16, 18, 19, 22 and 23 are canceled.

IV. STATUS OF AMENDMENTS

No Amendment After Final Rejection has been filed.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The disclosure relates to a program rewriting device, a network system which includes the program rewriting device, and a recording medium for realizing the program rewriting device and the network system, which is capable of executing rewriting of programs and devices connected to a network. In various exemplary embodiments, a judging unit determines which of the same type of software program between a peripheral device and a software program, is newer or older. Further, exemplary embodiments provide a first rewrite unit that compares the ages of the software stored in the memory and the software stored in the other devices. When program stored in the other devices is older than the program stored in the memory, then the program and the other devices can be automatically rewritten in the manner of the program stored in the memory. Further, in various exemplary embodiments, a second rewrite unit is provided that judges the same type of software program stored in the another device is newer than the software stored in the memory, rewrites the software program stored in the memory in the manner of the same type of software program stored in the another device.

Accordingly, the invention of claim 1 is directed to a peripheral device connected to a network including a device judgment unit that determines whether another peripheral device, that is a same type as the peripheral device, is connected to the network, a transmission unit that performs transmission and reception of data over the network to and from the another peripheral device, and a memory that stores a software program in a rewritable manner, the software program being software used by the peripheral device for executing prescribed operations. A type judgment unit is also provided that judges whether the another peripheral device stores, in a rewritable manner, a same type of software program as the software program stored in the memory, the same type of software program being software to be used by the another peripheral device for executing prescribed operations. Further, an old/new

judgment unit that, when the device judgment unit judges that another peripheral device is connected to the network and the type judgment unit judges that the another peripheral device stores the same type of software program in a rewritable manner, judges which of the same type of software program stored in the another peripheral device and the software program stored in the memory is at least one of older and newer. The invention of claim 1 further provides a first rewrite unit that, when the old/new judgment unit judges that the same type of software program stored in the another peripheral device is older than the software stored in the memory, rewrites the same type of software program stored in the another peripheral device into the software program stored in the memory. The invention of claim 1 further provides a second rewrite unit that when the old/new judgment unit judges that the same type of software program stored in the another peripheral device is newer than the software stored in the memory, rewrites the software program stored in the memory into the same type of software program stored in the another peripheral device.

The invention of claim 6 is directed to a network system which includes a network, a peripheral device connected to the network, another peripheral device connected to the network and having a memory that stores in a rewritable manner, a software program to be used by the another peripheral device for executing prescribed operations. The peripheral device includes a transmission unit that performs transmission and reception of data over the network to and from the another peripheral device, a memory that stores a software program in a rewritable manner to be used by the peripheral device for executing prescribed operations, and a type judgment unit that judges whether the another peripheral device stores a same type of software program as the software program stored in the memory of the peripheral device. The peripheral device further includes an old/new judgment unit that, when the type judgment unit judges that the another peripheral device stores the same type of software program in a rewritable manner, judges which of the same type of software

programs stored in the another peripheral device and the software program stored in the memory of the peripheral device is at least one of older and newer. Further, a first rewrite unit is provided that, when the old/new judgment unit judges that the same type of software program stored in the another peripheral device is older than the software program stored in the memory of the peripheral device, rewrites the same type of software program stored in the another peripheral device into the software program stored in the memory of the peripheral device. Claim 6 further provides a second rewrite unit that, when the old/new judgment unit judges that the same type of software program stored in the another peripheral device is newer than the software program stored in the memory of the peripheral device, rewrites the software program stored in the memory of the peripheral device into the same type of software program stored in the another peripheral device.

The invention of claim 12 is directed to a memory medium storing programs which include a first program of judging whether a peripheral device connected to a network stores, in a rewritable manner, the same type of software program as a software program stored, in a rewritable manner, in a reference memory accessible through the network. A second program is provided that judges which of the same type of software programs stored in the peripheral device and the software program stored in the reference memory is at least one of older and newer when the peripheral device is judged to store the same type of software program in a rewritable manner. A third program of rewriting the same type of software program stored in the peripheral device in the manner of the software program stored in the reference memory when the same type of software program stored in the peripheral device is judged to be older than the software stored in the reference memory. Further, the invention of claim 12 provides a fourth program of rewriting the software program stored in the reference memory into the same type of software program stored in the peripheral device when the same type of software

program stored in the peripheral device is judged to be newer than the software stored in the reference memory.

The invention of claim 17 is directed to a printer connected to a network that includes a device judgment unit that judges whether another printer is connected to the network, a transmission unit that performs transmission and reception of data over the network to and from another printer, a memory that stores, in a rewritable manner, firmware to be used by the printer for executing prescribed operations, and a type judgment unit that judges whether the another printer stores, in a rewritable manner, a same type of firmware as the firmware stored in the memory.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The following grounds of rejection are presented for review:

1) Claims 1, 3, 6, 8, 12, 14, 17, 20, 21, 24 and 25 are rejected under 35 U.S.C. §103(a) as unpatentable over U.S. Patent No. 5,706,431 to Otto in view of U.S. Patent No. 5,815,722 to Kalwitz et al.; and

2) Claim 9 is rejected under 35 U.S.C. §103(a) as unpatentable over U.S. Patent No. 5,706,431 to Otto in view of U.S. Patent No. 5,815,722 to Kalwitz et al., and further in view of U.S. Patent No. 5,737,536 to Herman et al.

VII. ARGUMENT

The Examiner rejects pending claims 1, 3, 6, 8, 12, 14, 17, 20, 21, 24 and 25 under 35 U.S.C. §103(a) as unpatentable over Otto in view of Kalwitz et al.; and claim 9 is rejected under 35 U.S.C. §103(a) as unpatentable Otto in view of Kalwitz and further in view of Herman. However, the Examiner has consistently improperly applied the law relating to obviousness. Proper application of the law demonstrates that no prima facie case of obviousness has been shown, and that the claimed invention would not have been obvious over the applied references.

A. Factual Inquiries to Determine Obviousness/Non-Obviousness

Several basic factual inquiries must be made in order to determine obviousness or non-obviousness of claims of a patent application under 35 U.S.C. §103. These factual inquiries are set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966):

> Under §103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or non-obviousness of the subject matter is determined.

The specific factual inquiries set forth in Graham have not been considered or properly applied by the Examiner in formulating the rejection of the subject claims. Particularly, the scope and content of the prior art and the level of ordinary skill in the pertinent art were not properly determined and demonstrated and applied to the claimed invention.

In the present case, proper consideration of the factual inquiries demonstrates nonobviousness of the claimed invention. The cited references do not teach or suggest at least one of the first and second rewrite units.

B. Claims 1, 3, 6, 8, 12, 14, 17, 20, 21, 24 and 25 Would Not Have Been Obvious Over U.S. Patent No. 5,706,431 to Otto In View of U.S. Patent No. 5,815,722 to Kalwitz

Claims 1, 3, 6, 8, 12, 14, 17, 20, 21, 24 and 25 are rejected as having been obvious under 35 U.S.C. §103(a) over U.S. Patent No. 5,706,431 to Otto in view of U.S. Patent

No. 5,815,722 to Kalwitz. However, claims 1, 3, 6, 8, 12, 14, 17, 20, 21, 24 and 25 would not have been obvious over Otto in view of Kalwitz.

1. Claims 1, 6 and 17

Claims 1, 6 and 17 similarly recite "a first rewrite unit that, when the old/new judgment unit judges that the same type of software program stored in the another peripheral device is older than the software stored in the memory, rewrites the same type of software program stored in the another peripheral device into the software program stored in the memory and a second rewrite unit that when the old/new judgment unit judges that the same type of software program stored in the another peripheral device is newer than the software stored in the memory, rewrites the software program stored in the memory into the same type of software program stored in the another peripheral device. (Emphasis added.) Otto in view of Kalwitz fails to disclose, teach or suggest this subject matter.

a. Otto Does Not Teach or Suggest All of the Claim Limitations

Otto discloses a system and method of operation for propagating revisions through a communications network which includes a plurality of nodes. The system of Otto includes (1) status reporting circuitry that is associated with a second node of the communications network, to collect and transmitting a current status of second node information stored in a memory of the second node, (2) first information revising circuitry that is associated with a first node of the communications network, to receive the current status from the second node, determining as a function of the current status, whether a revision of the second node information is required and, if the revision is required, transmitting the revision to the second node to revise the second node information and (3) second information revising circuitry that is associated with the second node of the communications network, to receive a current status from a third node of the communications network, determining as a function of the current status from the third node whether a revision of third node information stored in a memory of

the third node is required and, if the revision is required, transmitting the revision received from the first node to the third node to revise the third node information, the revision thereby propagating through the communications network via the first, second and third nodes thereof.

Accordingly, Otto allows revisions to propagate automatically through a communications network. Nodes in the network are responsible for both detecting when a revision to information in another node is necessary and transmitting the revision to the other node.

The Examiner asserts that the disclosure in column 2, lines 45-58 of Otto allows for revisions to operate automatically through a communications network and nodes in the network are responsible for both detecting when a revision to information in another node is necessary and transmitting the revision to the other node. The Examiner's assertion is incorrect.

The passage of Otto, asserted by the Examiner, is described in relation to the preceding paragraph, column 2, lines 24-44. In other words, the description in column 2, lines 45-58 is to summarize the description in the preceding paragraph. Therefore, in order to correctly understand what is intended to be described, correct and exact understanding of the description in column 2, lines 24-44 is needed.

In column 2, lines 24-44 of Otto, it is described that the revision of second node information stored in a memory of the second node is performed by the first information revising circuitry associated with a first node, and the revision of third node information stored in a memory of the third node is performed by the second information revising circuitry associated with the second node. The first, second and third nodes are included in a communications network.

As is apparent from the above description, what is described in column 2, lines 24-44 is that the first node acts on the second node, and the second node acts on the third node. However, Otto does not disclose that the first node is acted on by the second node.

In contrast, the applicant's claimed invention recites a first rewrite unit that rewrites the same type of software program stored in the another peripheral device (second device) into the software program stored in the memory of the peripheral device (first device), and a second rewrite unit that rewrites the software program stored in the memory of the peripheral device (first device) into the same type of software program stored in the another peripheral device (second device). As such, it is apparent that Otto fails to disclose one of the first rewrite unit and the second rewrite unit. Accordingly, Otto fails to disclose the features recited in the claimed invention.

Assuming arguendo that Otto discloses the first rewrite unit of the claimed invention, there is no disclosure as to the claimed second rewrite unit. Conversely, if it is understood that Otto discloses the second rewrite unit of the claimed invention, there is no disclosure as to the claimed first rewrite unit.

Otto clearly differs from the presently claimed invention with regards to at least the above discussed features of the claimed invention. Kalwitz does not, nor does the Examiner particularly assert as such, make up for the deficiencies of Otto discussed above. Dependent claims 3, 8, 14, 17, 20, 21, 24 and 25 are patentable for at least the reasons set forth above with respect to Independent claims 1, 6, and 12, as well as for the additional features they recite.

b. Otto and Kalwitz Contain No Teaching or Suggestion of the Advantages Realized by the Features According to Claims 1, 6 and 17

Providing a first and second rewrite unit as recited in claims 1, 6 and 17 gives rise to some advantages over the devices of the applied art. By configuring the system with the first

and second rewrite units programs of the devices connected to the network can be easily rewritten and labor required to manage the network system can be greatly reduced. These advantages cannot be obtained by either the Otto device or the Kalwitz device, and the references contain no suggestion that their disclosure should be applied towards addressing or achieving this advantage.

c. The Rejection's Reliance on the Combination of Otto and Kalwitz is Inconsistent with the Law

It is well settled that a rejection based on 35 U.S.C. §103(a) must rest on a factual basis, which the Patent and Trademark Office has the initial duty of supplying. In re GPAC, Inc., 57 F.3d 1573, 1582, 35 USPQ2d 1116, 1123 (Fed. Cir. 1995). A showing of a suggestion, teaching, or motivation to combine the prior art references is an "essential evidentiary component of an obviousness holding." *C.R. Bard, Inc. v. M3 Sys. Inc.*, 157 F.3d 1340, 1352, 48 USPQ2d 1225, 1232 (Fed. Cir. 1998). This evidence may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or, in some cases, from the nature of the problem to be solved. See *Pro-Mold & Tool Co. v. Great Lakes Plastics, Inc.*, 75 F.3d 1568, 1573, 37 USPQ2d 1626, 1630 (Fed. Cir. 1996). However, the suggestion more often comes from the teachings of the pertinent references. See *In re Rouffet*, 149 F.3d 1350, 1359, 47 USPQ2d 1453, 1459(Fed. Cir. 1998). This showing must be clear and particular, and broad statements drawing conclusions about the teaching of multiple references, standing alone, are not "evidence." See *In re Dembiczak*, 175 F.3d 994 at 1000, 50 USPQ2d 1614 at 1617. However, the suggestion to combine need not be express and "may come from the prior art, as filtered through the knowledge of one skilled in the art." *Motorola, Inc. v. Interdigital Tech. Corp.*, 121 F.3d 1461, 1472, 43 USPQ2d 1481, 1489(Fed. Cir. 1997).

It is impermissible for an Examiner to engage in hindsight reconstruction of the prior art using Applicant's claims as a template and selecting elements from references to fill the page. The references themselves must provide some teaching whereby the claimed combination would have been obvious. *In re Gorman*, 911 F.2d 982, 986, 18 USPQ2d 1885, 1888 (Fed. Cir, 1991) (emphasis added). That is, something in the prior art as a whole must suggest the desirability, and thus obviousness, of making the combination. See, *In re Beattie*, 974 F.2d 1309, 1312, 24 USPQ2d 1040, 1042 (Fed. Cir. 1992); *Lindemann Machinenfabrik GMBH v. American Hoist and Derrick Co.*, 730 F.2d 1452, 1462, 221 USPQ 481, 488 (Fed. Cir. 1984). He or she may not, because he or she doubts that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis. See, *In re Warner*, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967), cert. denied, 389 U.S. 1057 (1968).

If the PTO fails to meet this burden, then the applicant is entitled to a patent. *In re Glaug*, 62 USPQ2d 1151 (Fed. Cir. 2002).

The Examiner has failed to meet this burden. As discussed above, a rejection under on 35 U.S.C. §103(a) must be based on a facts and include a showing of a suggestion, teaching or *motivation* to combine the prior art references. The Office Action on page 4 asserts, with respect to the alleged teaching, suggestion or motivation to combine the references, that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Ot[t]o, with Kalwitz to implement the instant claimed invention because, using peripheral devices stand alone devices to perform updates is convenient and inexpensive." This allegation is a prime example of impermissible hindsight reasoning. Otto contains no disclosure whatsoever that teaches or suggests including the peripheral device of Kalwitz.

2. Claim 12

Claim 12 recites "a third program of rewriting the same type of software program stored in the peripheral device in the manner of the software program stored in the reference memory when the same type of software program stored in the peripheral device is judged to be older than the software stored in the reference memory, and a fourth program of rewriting the software program stored in the reference memory into the same type of software program stored in the peripheral device when the same type of software program stored in the peripheral device is judged to be newer than the software stored in the reference memory." (Emphasis Added.) Otto in combination with Kalwitz fails to disclose, teach or suggest this subject matter.

a. Otto Does Not Teach or Suggest All of the Claim Limitations

Otto discloses a system and method of operation for propagating revisions through a communications network which includes a plurality of nodes. The system of Otto includes (1) status reporting circuitry that is associated with a second node of the communications network, to collect and transmitting a current status of second node information stored in a memory of the second node, (2) first information revising circuitry that is associated with a first node of the communications network, to receive the current status from the second node, determining as a function of the current status, whether a revision of the second node information is required and, if the revision is required, transmitting the revision to the second node to revise the second node information and (3) second information revising circuitry that is associated with the second node of the communications network, to receive a current status from a third node of the communications network, determining as a function of the current status from the third node whether a revision of third node information stored in a memory of the third node is required and, if the revision is required, transmitting the revision received from the first node to the third node to revise the third node information, the revision thereby

propagating through the communications network via the first, second and third nodes thereof.

Accordingly, Otto allows revisions to propagate automatically through a communications network. Nodes in the network are responsible for both detecting when a revision to information in another node is necessary and transmitting the revision to the other node.

The Examiner asserts that the disclosure in column 2, lines 45-58 of Otto allows for revisions to operate automatically through a communications network and nodes in the network are responsible for both detecting when a revision to information in another node is necessary and transmitting the revision to the other node. The Examiner's assertion is incorrect.

The passage of Otto, asserted by the Examiner, is described in relation to the preceding paragraph, column 2, lines 24-44. In other words, the description in column 2, lines 45-58 is to summarize the description in the preceding paragraph. Therefore, in order to correctly understand what is intended to be described, correct and exact understanding of the description in column 2, lines 24-44 is needed.

In column 2, lines 24-44 of Otto, it is described that the revision of second node information stored in a memory of the second node is performed by the first information revising circuitry associated with a first node, and the revision of third node information stored in a memory of the third node is performed by the second information revising circuitry associated with the second node. The first, second and third nodes are included in a communications network.

As is apparent from the above description, what is described in column 2, lines 24-44 is that the first node acts on the second node, and the second node acts on the third node. However, Otto does not disclose that the first node is acted on by the second node.

In contrast, the applicant's claimed invention recites a first rewrite unit that rewrites the same type of software program stored in the another peripheral device (second device) into the software program stored in the memory of the peripheral device (first device), and a second rewrite unit that rewrites the software program stored in the memory of the peripheral device (first device) into the same type of software program stored in the another peripheral device (second device). As such, it is apparent that Otto fails to disclose one of the first rewrite unit and the second rewrite unit. Accordingly, Otto fails to disclose the features recited in the claimed invention.

Assuming arguendo that Otto discloses the first rewrite unit of the claimed invention, there is no disclosure as to the claimed second rewrite unit. Conversely, if it is understood that Otto discloses the second rewrite unit of the claimed invention, there is no disclosure as to the claimed first rewrite unit.

Otto clearly differs from the presently claimed invention with regards to at least the above discussed features of the claimed invention. Kalwitz does not, nor does the Examiner particularly assert as such, make up for the deficiencies of Otto discussed above.

b. Otto and Kalwitz Contain No Teaching or Suggestion of the Advantages Realized by the Features According to Claim 12

Providing the third and fourth programs as recited in claims 12 gives rise to some advantages over the devices of the applied art. By configuring the system with the third and fourth programs allows the devices connected to the network to be easily rewritten and labor required to manage the network system to be greatly reduced. These advantages cannot be obtained by either the Otto device or the Kalwitz device, and the references contain no suggestion that their disclosure be applied towards achieving this advantage.

c. The Rejection's Reliance on the Combination of Otto and Kalwitz is Inconsistent with the Law

It is well settled that a rejection based on 35 U.S.C. §103(a) must rest on a factual basis, which the Patent and Trademark Office has the initial duty of supplying. In re GPAC, Inc., 57 F.3d 1573, 1582, 35 USPQ2d 1116, 1123 (Fed. Cir. 1995). A showing of a suggestion, teaching, or motivation to combine the prior art references is an "essential evidentiary component of an obviousness holding." *C.R. Bard, Inc. v. M3 Sys. Inc.*, 157 F.3d 1340, 1352, 48 USPQ2d 1225, 1232 (Fed. Cir. 1998). This evidence may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or, in some cases, from the nature of the problem to be solved. See *Pro-Mold & Tool Co. v. Great Lakes Plastics, Inc.*, 75 F.3d 1568, 1573, 37 USPQ2d 1626, 1630 (Fed. Cir. 1996). However, the suggestion more often comes from the teachings of the pertinent references. See *In re Rouffet*, 149 F.3d 1350, 1359, 47 USPQ2d 1453, 1459(Fed. Cir. 1998). This showing must be clear and particular, and broad statements drawing conclusions about the teaching of multiple references, standing alone, are not "evidence." See *In re Dembiczak*, 175 F.3d 994 at 1000, 50 USPQ2d 1614 at 1617. However, the suggestion to combine need not be express and "may come from the prior art, as filtered through the knowledge of one skilled in the art." *Motorola, Inc. v. Interdigital Tech. Corp.*, 121 F.3d 1461, 1472, 43 USPQ2d 1481, 1489(Fed. Cir. 1997).

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974 F.2d 1309, 1312, 24 USPQ2d 1040, 1042 (Fed. Cir. 1992); *Lindemann Machinenfabrik GMBH v. American Hoist and Derrick Co.*, 730 F.2d 1452, 1462, 221 USPQ 481, 488 (Fed. Cir. 1984). He or she may not, because he or she doubts that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis. See, *In re Warner*, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967), cert. denied, 389 U.S. 1057 (1968).

If the PTO fails to meet this burden, then the applicant is entitled to a patent. *In re Glaug*, 62 USPQ2d 1151 (Fed. Cir. 2002).

The Examiner has failed to meet this burden. As discussed above, a rejection under on 35 U.S.C. §103(a) must be based on a facts and include a showing of a suggestion, teaching or *motivation* to combine the prior art references. The Office Action asserts on page 4, with respect to the alleged teaching, suggestion or motivation to combine the references, that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Ot[t]o, with Kalwitz to implement the instant claimed invention because, using peripheral devices stand alone devices to perform updates is convenient and inexpensive." This allegation is a prime example of impermissible hindsight reasoning. Otto contains no disclosure whatsoever that teaches or suggests including the peripheral device of Kalwitz.

3. Conclusion

For at least the foregoing reasons, appellant respectfully submits that one of ordinary skill in the art would not have combined the teachings of the references, at least because none of the references teach or suggest a recognition of the problem addressed by the present invention. Further, appellant respectfully submits that even if the teachings of the references were to have somehow been combined, such teachings would not have led one of ordinary skill in the art to the present invention at least because none of the references teach or suggest

a first rewrite unit that judges the type of program stored another peripheral device and a second rewrite unit that rewrites the program stored in memory into the same type of program stored in the peripheral device.

The rejection should thus be reversed.

C. Claim 9 Would Not Have Been Obvious Over U.S. Patent No. 5,706,431 to Otto In View of U.S. Patent No. 5,815,722 to Kalwitz et al. and Further In View of U.S. Patent No. 5,737,536 to Herman

Claim 9 is rejected under 35 U.S.C. §103(a) as unpatentable over U.S. Patent No. 5,706,431 to Otto in view of U.S. Patent No. 5,815,722 to Kalwitz et al. and further in view of U.S. Patent No. 5,737,536 to Herman. However, claim 9 would not have been obvious over Otto in view of Kalwitz and further in view of Herman. This is the only rejection of claim 9.

1. Claim 9

Claim 9 recites that "at least one of the peripheral device and the another peripheral device includes a rewrite prevention unit that prevents rewrite of the software program stored in the memory of at least one of the peripheral device and the another peripheral device, and wherein the first rewrite unit or second rewrite unit does not rewrite the software program that the rewrite prevention unit prevents the rewrite of."

a. Claim 9 Depends From Claim 6

Claim 9 is patentable based at least on its dependence from claim 6 for at least the reasons stated above in connection with the sole rejection of claim 6.

b. The Secondary Reference Applied in Rejected Claim 9 Does Not Overcome the Deficiencies in the Primary References

Herman does not overcome the deficiencies in Otto and Kalwitz described above in connection with the rejection of claim 6. Accordingly, Claim 9 is patentable over Otto in view of Kalwitz and further in view of Herman.

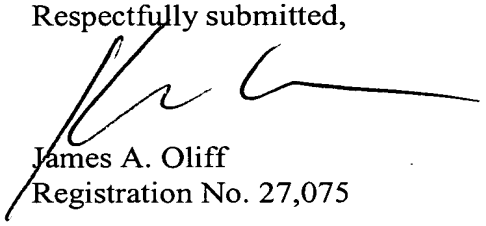
2. Conclusion

For at least the foregoing reasons, appellant respectfully submits that one of ordinary skill in the art would not have combined the teachings of the references, at least because none of the references teach or suggest a recognition of the problem addressed by the present invention. As such, appellant respectfully submits that for at least the reasons stated above in connection with the rejection of claim 6, claim 9 is patentable over the applied art. The rejection should thus be reversed.

VIII. CONCLUSION

For all of the reasons discussed above, it is respectfully submitted that the rejections are in error and that claims 1, 3, 6, 8, 9, 12, 14, 17, 20, 21, 24 and 25 are in condition for allowance. For all of the above reasons, Appellant respectfully requests this Honorable Board to reverse the rejections of claims 1, 3, 6, 8, 9, 12, 14, 17, 20, 21, 24 and 25.

Respectfully submitted,



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Filed: February 23, 2005

CLAIMS APPENDIX

CLAIMS INVOLVED IN THE APPEAL:

The following listing of claims will replace all prior versions, and listings, of claims in the application:

1. (Currently Amended) A peripheral device connected to a network comprising:

a device judgment unit that judges whether another peripheral device, that is a same type as the peripheral device, is connected to the network;

a transmission unit that performs transmission and reception of data over the network to and from the another peripheral device;

a memory that stores a software program in a rewritable manner, the software program being software used by the peripheral device for executing prescribed operations;

a type judgment unit that judges whether the another peripheral device stores, in a rewritable manner, a same type of software program as the software program stored in the memory, the same type of software program being software to be used by the another peripheral device for executing prescribed operations;

an old/new judgment unit that, when the device judgment unit judges that another peripheral device is connected to the network and the type judgment unit judges that the another peripheral device stores the same type of software program in a rewritable manner, judges which of the same type of software program stored in the another peripheral device and the software program stored in the memory is at least one of older and newer;

a first rewrite unit that, when the old/new judgment unit judges that the same type of software program stored in the another peripheral device is older than the software

stored in the memory, rewrites the same type of software program stored in the another peripheral device into the software program stored in the memory; and

a second rewrite unit that when the old/new judgment unit judges that the same type of software program stored in the another peripheral device is newer than the software stored in the memory, rewrites the software program stored in the memory into the same type of software program stored in the another peripheral device.

2. (Canceled)

3. (Previously Presented) A peripheral device as claimed in claim 1, wherein the type judgment unit performs judgment for all other peripheral devices connected to the network; and the old/new judgment unit performs judgment on the all other devices that are judged to store the same type of software program by the type judgment unit.

4-5. (Canceled)

6. (Currently Amended) A network system comprising:

a network;

a peripheral device connected to the network; and

another peripheral device connected to the network and having a memory that stores, in a rewritable manner, a software program to be used by the another peripheral device for executing prescribed operations, the peripheral device comprising:

a transmission unit that performs transmission and reception of data over the network to and from the another peripheral device;

a memory that stores a software program in a rewritable manner to be used by the peripheral device for executing prescribed operations;

a type judgment unit that judges whether the another peripheral device stores a same type of software program as the software program stored in the memory of the peripheral device;

an old/new judgment unit that, when the type judgment unit judges that the another peripheral device stores the same type of software program in a rewritable manner, judges which of the same type of software program stored in the another peripheral device and the software program stored in the memory of the peripheral device is at least one of older and newer;

a first rewrite unit that, when the old/new judgment unit judges that the same type of software program stored in the another peripheral device is older than the software program stored in the memory of the peripheral device, rewrites the same type of software program stored in the another peripheral device into the software program stored in the memory of the peripheral device; and

a second rewrite unit that, when the old/new judgment unit judges that the same type of software program stored in the another peripheral device is newer than the software program stored in the memory of the peripheral device, rewrites the software program stored in the memory of the peripheral device into the same type of software program stored in the another peripheral device.

7. (Canceled)

8. (Previously Presented) The network system as claimed in claim 6, wherein the type judgment unit performs judgment for all other peripheral devices connected to the network; and the old/new judgment unit performs judgment on all other peripheral devices that are judged to store the same type software program by the type judgment unit.

9. (Previously Presented) The network system as claimed in claim 6, wherein at least one of the peripheral device and the another peripheral device includes a rewrite prevention unit that prevents rewrite of the software program stored in the memory of at least one of the peripheral device and the another peripheral device, and wherein the first rewrite

unit or second rewrite unit does not rewrite the software program that the rewrite prevention unit prevents the rewrite of.

10-11. (Canceled)

12. (Currently Amended) A memory medium storing programs comprising:

a first program of judging whether a peripheral device connected to a network stores, in a rewritable manner, the same type of software program as a software program stored, in a rewritable manner, in a reference memory accessible through the network;

a second program of judging which of the same type of software program stored in the peripheral device and the software program stored in the reference memory is at least one of older and newer when the peripheral device is judged to store the same type of software program in a rewritable manner;

a third program of rewriting the same type of software program stored in the peripheral device in the manner of the software program stored in the reference memory when the same type of software program stored in the peripheral device is judged to be older than the software stored in the reference memory; and

a fourth program of rewriting the software program stored in the reference memory into the same type of software program stored in the peripheral device when the same type of software program stored in the peripheral device is judged to be newer than the software stored in the reference memory.

13. (Canceled)

14. (Original) The memory medium as claimed in claim 12, wherein the first program judges for all other devices connected to the network; and the second program performs judgment on all other devices that are judged to store the same type software program by the first program.

15-16. (Canceled)

17. (Currently Amended) A printer connected to a network comprising:

a device judgment unit that judges whether another printer is connected to the network;

a transmission unit that performs transmission and reception of data over the network to and from the another printer;

a memory that stores a, in a rewritable manner, firmware to be used by the printer for executing prescribed operations;

a type judgment unit that judges whether the another printer stores, in a rewritable manner, a same type of firmware as the firmware stored in the memory;

an old/new judgment unit that when the device judgment unit judges that the another printer is connected to the network and the type judgment unit judges that the another printer stores the same type of firmware in a rewritable manner, judges which of the same type of firmware stored in the another printer and the firmware stored in the memory is at least one of older and newer in version;

a first rewrite unit that when the old/new judgment unit judges that the same type of firmware stored in the another printer is older in version than the firmware stored in the memory, rewrites the same type of firmware stored in the another printer to the firmware stored in the memory; and

a second rewrite unit that when the old/new judgment unit judges that the same type of firmware stored in the another printer is newer in version than the firmware stored in the memory, rewrites the firmware stored in the memory into the same type of firmware stored in the another printer.

18-19. (Canceled)

20. (Previously Presented) A peripheral device as claimed in claim 1, wherein the device judgment unit judges whether the another peripheral device is connected to the network when the peripheral device is first connected to the network.

21. (Previously Presented) A peripheral device as claimed in claim 1, wherein the device judgment unit determines that the another peripheral device is the same type as the peripheral device based on device information about the another peripheral device.

22-23. (Canceled)

24. (Currently Amended) A printer as claimed in claim 17, wherein the device judgment unit judges whether the another printer is connected to the network when the printer is first connected to the network.

25. (Currently Amended) A printer as claimed in claim 17, wherein the device judgment unit determines that the another printer is the same type as the printer based on device information about the another printer.

EVIDENCE APPENDIX

NONE

RELATED PROCEEDINGS APPENDIX

NONE